



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO KmX Chemical Corp. Registration No. 40722**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and KmX Chemical Corp., regarding the New Church facility, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the New Church facility located at 30474 Energy Drive in New Church, Virginia.
5. "KmX" means KmX Chemical Corp., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. KmX is a "person" within the meaning of Va. Code § 10.1-1300.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means an Article 5 State Operating Permit to operate a solvent reclamation and purification facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to KmX on June 20, 2016.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. KmX owns and operates the Facility in New Church, Virginia. The Facility is the subject of the Permit.
2. On November 6, 2019, Department staff received a report from KmX identifying four exceedances of volatile organic compound ("VOC") mixture loading rates during October 2019 as listed below:

Date	Gallons Loaded	Loading Time (hours)	Loading Rate (gallons/hour)	Percent Over
October 23, 2019	5581	1	5581	12%
October 24, 2019	4647	0.72	6454	29%
October 25, 2019	5010	0.78	6423	28%
October 29, 2019	5558	1	5558	11%

3. Condition 46 of the Permit states that the hourly loading rate of VOC mixtures shall not exceed 5,000 gallons per hour.
4. 9 VAC 5-170-160(A) states that the Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.
5. Va. Code § 10.1-1322(A) states that DEQ has the authority to issue, amend, revoke, or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.

6. On December 18, 2019, based on the November 6, 2019 report from KmX, the Department issued Notice of Violation No. ATRO001387 to KmX for the violations described in paragraphs C(2) through C(6), above.
7. On December 18, 2019, KMX responded to the NOV by telephone, stating that the VOC mixtures were loaded into a transport truck using the transport truck pump. While the truck loader was aware of the 5,000 gallons per hour Permit limit, the truck loader mistakenly thought that the limit only applied to KmX facility pumps and not those associated with the transport truck itself. Also according to KmX, transport truck loaders have received additional training to clarify that Permit loading rates apply to all KmX material movements regardless of who owns the pump.
8. Based on the results of the November 6, 2019 notification and the December 18, 2019 NOV and response, the Board concludes that KmX has violated Permit Condition 46 and 9 VAC 5-170-160(A), and Va. Code § 10.1-1322(A) as described in paragraphs C(2) through C(7), above.
9. On June 27, 2018, KmX reported to DEQ that the Facility will close as of June 29, 2018. KmX has been selling remaining equipment and materials toward permanent closure.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders KmX, and KmX agrees to pay a civil charge of \$4,000 in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

KmX shall include its Federal Employer Identification Number (FEIN) 32-0123762 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, KmX shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of KmX for good cause shown by KmX, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ATRO001387 dated December 18, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, KmX admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. KmX consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. KmX declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by KmX to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. KmX shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. KmX shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. KmX shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and KmX. Nevertheless, KmX agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after KmX has completed all of the requirements of the Order;
  - b. KmX petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to KmX.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve KmX from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by KmX and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of KmX certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind KmX to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of KmX.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

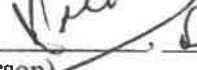
representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, KmX voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ~~23~~<sup>22</sup> day of January, 2020  
CEN

  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

KmX Chemical Corp. voluntarily agrees to the issuance of this Order.

Date: 01/22/2020 By: Jorge Piedra  Site Manager  
(Person) (Title)  
KmX Chemical Corp.

State Maryland  
Commonwealth of Virginia  
City/County of Somerset

The foregoing document was signed and acknowledged before me this 22nd day of  
January, 2020 by J.J. Piedra who is  
Site Manager of KmX Chemical Corp., on behalf of the corporation.

Karen Gabriszeski  
Notary Public

n/a  
Registration No.

My commission expires: 6/15/21

Notary seal:

